IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.07.2015

THE HON'BLE Mr.SANJAY KISHAN KAUL, CHIEF JUSTICE
and
THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.A.No.630 of 2004

Tamilnadu State Transport
Corporation (Kumbakonam) Ltd.,
Rep., by Managing Director
formerly known as the Management
of Maruthu Pandiyar Transport Corpn., Ltd.,
Maruthupattai, Karaikudi 623 307 ... Appellant

(Cause title accepted vide order of Court dated 29.03.2005 made in W.A.M.P.No.1149 of 2005)

Vs.

1.The Presiding Officer,
Industrial Tribunal,
Chennai.

2.K.Razak
Ex.Conductor,
Muslim Street,
Keeramangalam Post,
Alangudi Taluk,
Pudukottai District. ... Respondents

Prayer:-Writ Appeal filed under Section 15 of the Letters patent against the order dated 31.03.2004 passed by learned single Judge in W.P. No.13896 of 1997.

For Appellant .. Mr.T.Chandrasekaran

For Respondents .. R1-Tribunal
M/s.A.V.Bharathi for R2

JUDGMENT
(Order of the Court was made by T.S.SIVAGNANAM,J.)

This appeal by the Management of a State owned Transport Corporation, has been filed challenging the order, dated 31.03.2004 in W.P.No.13896 of 1997, by which the Writ Petition filed by the Appellant Management questioning the order passed by the Industrial Tribunal, Chennai, rejecting the Approval Petition filed under Section 33(2)(b) of the Industrial Disputes Act, 1947 (ID Act), was dismissed.

2. The second respondent was working as a Conductor in the appellant Management and was issued a charge memo alleging that he received Rs.9/- from two passengers at the rate of Rs.4.50 paise each being the bus fare from Ramanathapuram to Mandapam, but were issued tickets for a value of Rs.1.90ps from Uchupuli to Mandapam; received Rs.4.90ps from five passengers each and issued tickets for lesser value of Rs.2.30ps. The second respondent was charged of attempting to misappropriate a sum of Rs.18.20ps, and retaining a sum of Rs.60.10ps over and above the collection amount in his cash

bag. Though the second respondent did not submit his explanation to the charge, he participated in the domestic enquiry in which the Checking Inspector was examined as a Management witness, who was cross examined by the second respondent. The enquiry officer held the charges proved and a second show cause notice was issued to the second respondent calling for further explanation and the Appellant Management not being satisfied with the explanation offered, dismissed the second respondent from service.

3. The appellant Management filed an application before the Industrial Tribunal under Section 33(2)(b) of the ID Act, seeking for approval of the order of dismissal. The Industrial Tribunal by order dated 14.03.1997, dismissed the approval petition. The appellant Management challenged this order of the Industrial Tribunal in W.P.No.13896 of 1997, which was dismissed by order dated 31.03.2004 and challenging the concurrent findings, the appellant Management is before us by way of this Appeal.

4. The learned counsel appearing for the appellant submitted that the Industrial Tribunal could not have gone into the merits of the case, more particularly while considering an application under Section 32(2)(b) of the ID Act. Further, it is submitted that the Industrial

Tribunal was required to see as to whether a *prime facie* case is made out and could not have re-appreciated the evidence on record. Therefore, it is submitted that the Industrial Tribunal exceeded its jurisdiction, while considering an application for approval of the order of dismissal. Further, it is submitted that the learned Single Judge failed to properly appreciate the contentions raised by the appellant Management and the decisions relied upon with regard to the scope and jurisdiction of the Industrial Tribunal, while examining the petition under Section 33(2)(b) of the ID Act were not appreciated in a proper manner. Further, the learned counsel elaborately referred to the evidence which was available before the domestic enquiry and that the Tribunal committed grave error in the manner of appreciation of the evidence, the order being perverse, the Writ Court ought to have interfered with the same.

5. We have heard the learned counsel appearing for the second respondent on the above submissions.

6. Before we venture into the factual matrix, it is relevant to point out that the scope of interference of a Writ Court over orders or awards of the Industrial Tribunal/Labour Court is limited. Re-appreciation of evidence available before the Tribunal/Labour

Court is wholly beyond the purview of a Writ Court, unless it is demonstrated that the findings rendered by the Industrial Tribunal or the Labour Court was absolutely perverse. Section 32(2)(b) of the ID Act mandates the employer to obtain approval of its action while there is an alteration of the service condition or while imposing a punishment for misconduct not connected with the industrial dispute, which is already pending before the authority. In the instant case, the Industrial Tribunal considered the evidence which was available before the enquiry officer and pointed out that the place of checking was disputed by the second respondent and in this regard, it referred to Exhibit M-9, in which it had been written by the Checking Inspector that the bus was checked at Thamaraikulam Outer. Reference was also made to Exhibit M.2, which also is to the same effect regarding the place of checking. In Exhibit M.3 statement, it was stated that the bus was checked at Uchupuli outer. The second respondent contended that Exhibit M-12 was obtained under threat and coercion, apart from alleging political enmity between him and the Checking Inspector one Mr.Govindarajan, who was not examined as the witness in the domestic enquiry.

7. The Industrial Tribunal after taking into consideration the evidence available before the enquiry officer rejected Exhibit M-12 and

also pointed out that atleast one of the seven passengers to whom tickets have been issued for over denomination ought to have been examined to prove the charge. Though a statement was recorded from one of the passenger in Exhibit M-12, he was not examined in the domestic enquiry. Thus taking into consideration the evidence and the decision of the Hon'ble Supreme Court in the case of ***Lalla Ram vs Management Of D.C.M. Chemical*** reported in ***1978-1-LLJ-507(SC),*** the Approval Petition was rejected.

8. The learned Single Judge after elaborately referring to the contentions raised by the appellant Management considered the evidence, which was available before the enquiry officer in the domestic enquiry discussed the manner in which the Industrial Tribunal considered the evidence, upheld the decision of the Tribunal rejecting the Approval Petition as the Tribunal was satisfied that there was no material to show that the passengers had boarded the bus at Ramanathapuram. After taking note of the findings recorded by the Tribunal, the Court came to the conclusion that the order is neither erroneous nor perverse.

9. We have also perused the order passed by the Tribunal as

well as the learned Single Judge and we concur with the findings recorded by the learned Single Judge and hold that there is no perversity in the approach of the Industrial Tribunal and therefore, the Writ Petition filed by the appellant Management was rightly dismissed.

10. For all the above reasons, we find no goods grounds to interfere with the order passed in the Writ Petition and accordingly, Writ Appeal fails and the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(S.K.K.,CJ.) (T.S.S., J.)
03.07.2015

Index :Yes/No
pbn

The Hon'ble The Chief Justice
and
T.S.SIVAGNANAM, J.
pbn

To

The Presiding Officer,
Industrial Tribunal,
Chennai.

Judgment in
W.A.No.630 of 2004

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